



UNITED STATES DISTRICT COURT

CHAMBERS OF
SUSAN OKI MOLLWAY
CHIEF UNITED STATES DISTRICT JUDGE

DISTRICT OF HAWAII
300 ALA MOANA BOULEVARD, C-409
HONOLULU, HAWAII 96850-0409

TELEPHONE
(808) 541-1720
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October 26, 2009

Mr. Kenneth Tohru Hamayasu
Chief, Rapid Transit Division
Transportation Services Department
650 South King Street, 3rd Floor
Honolulu, HI 96813

Ms. Faith K. Miyamoto
Chief, Transit Planning
and Environmental Studies
Transportation Services Department
650 South King Street, 3rd Floor
Honolulu, HI 96813

Re: Proposed Rail System

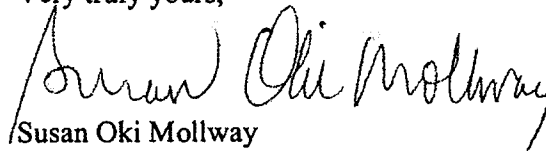
Dear Mr. Hamayasu and Ms. Miyamoto:

The Federal Protective Service and the United States Marshals Service have opined that the proposed rail system running down Halekauwila Street poses no increased security risk to the courthouse. As I am not certain how widely that opinion has been disseminated, I thought I should let you know the court's reaction to the opinion. Enclosed is a letter I have sent to the FPS and the USMS on that subject.

Mr. Kenneth Tohru Hamayasu
Ms. Faith K. Miyamoto
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I am also sending copies of our response to a number of decisionmakers and interested persons, including persons who have had direct communications with the court on security issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan Oki Mollway". The signature is fluid and cursive, with the first name "Susan" being more prominent than the last name.

Susan Oki Mollway
Chief United States District Judge

Enclosure

cc w/enc: Honorable Daniel K. Inouye
Honorable Daniel Akaka
Honorable Neil Abercrombie
Honorable Mazie Hirono
Honorable Gary H. Okino
Honorable Nestor Garcia
Honorable Romy Cachola
Honorable Charles Djou
Honorable Rod Tam
Honorable Todd Apo
Elizabeth Merritt, Deputy General Counsel,
National Trust for Historic Preservation

cc w/out Enc: Michael J. Prout
Gary W. Schenkel



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October 23, 2009

Mr. Gary W. Schenkel
Director
Federal Protective Service
800 North Capitol Street, NW
Suite 500
Washington, D.C. 20536

Mr. Michael J. Prout
Assistant Director, Judicial Security
U.S. Marshals Service
U.S. Department of Homeland Security
800 North Capitol Street, NW
Suite 500
Washington, D.C. 20536

Re: Proposed Rail System

Dear Mr. Schenkel and Mr. Prout:

I am writing about a letter you sent earlier this month to Senator Daniel K. Inouye as a follow up to a meeting you had with his staff to discuss "the effect of the Honolulu Light Rail Project on security at the Prince-Jonah-Kuhio Kalaniana'ole (PJKK) Courthouse in Honolulu, Hawaii." Your letter states:

It is the position of both FPS and the USMS that the proposed light rail on Halekauwila Street does not pose any additional threat to the Courthouse beyond that of surface traffic. Although additional countermeasures are not required, the City of Honolulu has offered to install several additional security measures to address concerns associated with sensitive staff.

I am amazed that the FPS and the USMS are able to take a position without consulting the judges or anyone else who works in the courthouse. Neither of you visited the judges' chambers that will be most directly affected by the proposal for building an elevated light rail system that runs down Halekauwila Street, and your letter is conspicuously lacking in any reference to any staff or any contractor on whose work you are relying in taking your position. No test results are

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cited, and no study is mentioned. In short, the FPS and the USMS are taking a position on a matter they have not actually reviewed!

Not only have the FPS and the USMS not reviewed the matter, the USMS has refused to review the matter. This court previously asked the USMS to prepare a retaliation/revenge threat assessment in connection with the proposed rail system and was expressly assured by Lee Colbert that an assessment would be done. I have since learned that the USMS has changed its mind and is now declining to study the issue at all. This decision not to prepare an assessment has stunned all of us at the courthouse, and our reaction has now been multiplied upon reading that you have nevertheless given Senator Inouye your opinion on the matter.

We understand that, as stated in the 2009-2010 USMS Performance Budget, Congressional Submission, the USMS's mission is "to protect federal judges, jurors and other members of the judiciary. This mission is accomplished by anticipating and deterring threats to the judiciary, and continuous development and employment of innovative protective techniques." This mission was also highlighted by this district's United States Marshal, Mark M. "Dutch" Hanohano, in a letter dated August 10, 2009, that focused on the issue of gathering information about threats to judges. In the letter, a copy of which is attached, Marshal Hanohano wrote that "the USMS has the responsibility to identify individuals, groups or activities that may pose a potential threat to persons and property within its jurisdiction." He noted, "The safety of our protectees is of vital importance to the USMS." Assessing the impact of the rail system on this court falls squarely within the stated mission of anticipating threats against the judiciary and ensuring the safety of protectees.

The USMS's refusal to conduct an assessment not only runs counter to the USMS's stated mission, it also runs counter to the USMS's own practice in other jurisdictions. What is it about Hawaii in particular that causes us to be less deserving of protection than other jurisdictions in which the USMS, far from issuing opinions without studies, has urged action to ensure judges' security?

For example, I have a letter written in February 2009 by David Hubbuch, the Chief of the Office of Security System in the Washington, D.C., office of the USMS's Judicial Security Division. The letter, a copy of which is attached, is addressed to Judge Nancy Atlas of the United States District Court for the Southern District of Texas and urges her to "seek relocation of the rail routes and stations so they are some distance from the Casey Courthouse." He says, "We must preserve sufficient space surrounding our buildings to protect them from harm," citing "the tragic 1995 bombing of the Murrah Federal Building in Oklahoma City [that] taught us that federal facilities, such as courthouses, have a high target value to terrorists and those who intend harm to government officers, witnesses, the public and others." The federal court in Hawaii shares these concerns, but the USMS reaction to the proposed rail project in Honolulu is at odds with its reaction to the rail project proposed in Houston.

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In researching the USMS's mission, we learned that the USMS even provides assessments for nonfederal courthouses. A newspaper article dated July 26, 2009, which is attached, discusses the grave lack of security at the Terrebonne Parish Courthouse in Houma, Louisiana. The Public Works Director of Terrebonne Parish, Greg Bush, is described as "waiting for an updated assessment from the U.S. Marshals Service, which does reports on courthouse security and recommends improvements." We are at a loss to understand why a federal courthouse in Honolulu is deemed less worthy of consideration. This courthouse sees numerous high-profile cases that, especially in a small community like ours, garner headlines in news reports and give rise to strong emotional reactions within the community. We are no less at risk than court employees in other jurisdictions.

I admit that I am a layperson as far as security measures are concerned, but even I can think of reasons that an elevated rail system might subject this courthouse to greater risk than the present surface traffic. For one thing, elevating an explosive device must mean the explosion will affect different parts of the courthouse. An explosion on the elevated rail track would likely immediately cause the roof overhang on the fourth floor to collapse, both because an explosion from the elevated rail would be close to the overhang and because it is probably the flimsiest part of the exterior of our building. Nothing on the street level is comparable. If the roof overhang collapses, it is easy to imagine the chain reaction of further collapses. For another thing, we have heard some preliminary mention by the City of placing barriers along the rail track, to deflect any explosion that might affect the courthouse. This proposal appears untenable to us, as it appears likely to cause any explosion to reflect back onto the passengers in the rail car. We are not seeking to increase the risk to others just to protect ourselves.

It is my understanding that a Building Security Assessment of the federal complex in Honolulu was completed last year for the Department of Homeland Security. I do not think this study considered the impact of the proposed rail system on the courthouse, but I wonder why it could not be supplemented to include such consideration. In addition, I believe that, within this decade, the General Services Administration may have studied the effect of a bomb on this federal complex. If I am correct, could that study be augmented to consider the effect of an explosion from the elevated rail system? Any such study should consider explosive devices of the magnitude recommended for study by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. It should also consider the presence of a daycare center in the federal complex. I have no knowledge that the FPS or the USMS has even considered supplementing existing studies.

I very much hope that you will reconsider your position and conduct an actual assessment. At the very least, I would like to know the following:

(1) On what basis did the FPS and the USMS conclude that "the proposed light rail on Halekauwila Street does not pose any additional threat to the Courthouse beyond that of surface traffic"?

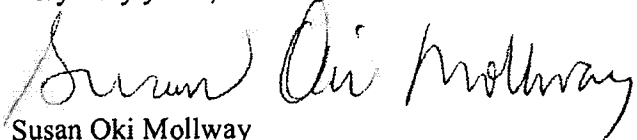
Mr. Gary W. Schenkel
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(2) Why is Hawaii being treated differently from other jurisdictions in which the USMS is actively advocating greater protection of courthouses?

(3) If, given the failure of the FPS and the USMS to prepare an assessment, another entity prepares an assessment and concludes that the proposed rail system poses a materially increased risk to the courthouse, will the FPS and the USMS then work with the court to address its security concerns?

- I look forward to hearing from you on the above matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan Oki Mollway", written in a cursive style.

Susan Oki Mollway
Chief United States District Judge

Enclosures

cc: Senator Daniel K. Inouye



U.S. Department of Justice
United States Marshals Service
District of Hawaii

Honolulu, HI 96850

August 10, 2009

Glen Kajiyama, Federal Security Director
Transportation Security Administration
300 Rodgers Blvd., #45
Honolulu, HI 96819

Dear Mr. Kajiyama:

The purpose of this letter is to heighten the awareness and request the continued assistance of the federal law enforcement agents and officers who have responsibilities for investigation and enforcement with regard to information about United States Marshals Service's (USMS) protectees. It is important that ANY information that is developed in regard to USMS protectees be reported IMMEDIATELY to the USMS. The mere mention of a judge or other protectee is significant and should be reported; regardless of the source of information or the apparent credibility. The USMS evaluates all such information to determine if the individuals, groups or activities pose a potential threat to our protectees. This evaluation is done through a variety of means and individuals in the field and at USMS Headquarters to include: District Threat Investigators, Protective Intelligence Investigators, and Intelligence Research Specialists assigned to the USMS Office of Protective Intelligence.

Title 28 of the United States Code, Section 566, establishes the USMS' authority to provide personal protection to federal jurists, court officers, witnesses, and other threatened persons in the interest of justice, where criminal intimidation impedes the judicial process or any other official proceeding.

This authority not only includes the protection of federal judges, but U. S. Supreme Court Justices outside of Washington, D.C., U. S. Attorneys and Assistant U. S. Attorneys, federal jurors, federal witnesses, U. S. Probation Officers, Pre-trial Services Officers and Clerks of the Court. Other USMS protectees include U. S. Tax Court Judges, U. S. Trustees, Federal Public Defenders, the Deputy Attorney General of the Department of Justice and the Director of the Office of National Drug Control Policy, also known as the Drug Czar.

Glen Kajiyama, Federal Security Director
August 10, 2009
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As a result of the authority to protect, the USMS has the responsibility to identify individuals, groups or activities that may pose a potential threat to persons and property within this jurisdiction. Once a potential threat is identified, the USMS conducts protective investigations to collect and assess all available information to determine a subject's true motive, intent and ability to harm or pose a threat to a USMS protectee. The USMS also notifies the Federal Bureau of Investigation (FBI) which conducts a parallel criminal investigation with the goal to prosecute. The USMS works in close cooperation with the FBI to ensure the safety of our protectees.

Protective investigations are given the highest priority and are conducted immediately with an offensive and proactive strategy. The goal of a protective investigation is not to prosecute, but to mitigate the threat.

The USMS is interested in any and all information regarding our protectees that is developed during the course of your investigations, to include interviews and contacts with suspects, arrested persons, detainees, witnesses or informants. This information regarding federal judges, federal prosecutors, probation officers, and any other protectees could include:

A threat of any action with the intent to assault, kill, oppose, impede, intimidate, or interfere with a protectee. A threat may be conveyed in writing, verbally, telephonically, via the Internet or relayed through informants or third parties.

Any inappropriate communication (IC) or veiled threat that makes unsettling overtures of an improper nature or any displeasure or negative comment directed at a protectee. The IC can be conveyed in writing, verbally, telephonically, via the Internet or relayed through informants or third parties.

Any unusual behavior or unusual direction of interest expressed as odd, bizarre, intense or obsessive ideas in regard to USMS protectees.

Approaching, attempting to approach or any suspicious activity involving a USMS protectee at their work, residence or while transiting to and from.

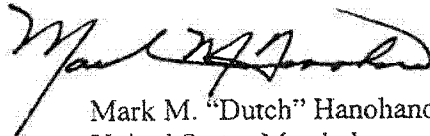
Evidence that personal information about a USMS protectee or their family has been researched by a subject via the Internet, public records or other sources.

Or any other information you develop that you think may impact a USMS protectee.

Glen Kajiya, Federal Security Director
August 10, 2009
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The safety of our protectees is of vital importance to the USMS; therefore, I request that any information regarding the protectees be reported as soon as possible to the nearest USMS office. A delay in information flow could endanger the safety of our protectees. We look forward to a continued positive relationship with your office as partners in the federal criminal justice system. Thank you for your assistance in keeping our protectees safe. Should you have any questions or concerns, please feel free to contact Deputies Annabelle Bolter at 808-541-3021, Arthur Oh at 808-541-3050 and Chief Deputy Chriselda "Chris" Guerrero at 808-541-3016.

Heartfelt Aloha,



Mark M. "Dutch" Hanohano
United States Marshal
District of Hawaii

cc: ✓ Chief Judge Susan Mollway
U. S. District Court

Sue Beitia, Clerk of Court
U. S. District Court

Richard Crawford, Chief
U. S. Probation Office

Carol Miyashiro, Chief U. S. Pretrial
Pre-Trial Office

Edward Kubo, U. S. Attorney
U. S. Attorneys Office

Peter Wolff, Jr., Federal Public Defender
Federal Public Defenders Office



U.S. Department of Justice

United States Marshals Service

Judicial Security Division

Washington, DC 20530-1100

FEB 25 2009

The Honorable Nancy Atlas
United States District Judge
Southern District of Texas
9015 Bob Casey U.S. Courthouse
515 Rusk Avenue
Houston, Texas 77002-2601

Re: Security hazards caused by light rail lines and stations adjacent to Bob Casey Courthouse, Houston, Texas

Dear Judge Atlas,

I write to express my deep concern regarding the City of Houston's plans to construct light rail lines and stations immediately in front of and behind the Bob Casey U.S. Courthouse. By any measure, surface rail lines and stations adjacent a major federal courthouse introduce unwelcome security challenges the United States Marshals Service (USMS) must strongly counsel against. The older design and layout of the Casey Courthouse elevates these challenges to unacceptable levels.

Federal courthouse design has radically changed over the past 20 years. First, it has been recognized that it is of critical importance to keep judicial officials, prisoners and the public completely separate from one another until they all meet in the courtroom. This concept led to the incorporation of secure entrances and concealed parking areas for judges, and to the addition of man trap "sally port" prisoner handling areas which isolate all prisoner movements within secure USMS space. Second, the tragic 1995 bombing of the Murrah Federal Building in Oklahoma City taught us that federal facilities such as courthouses have a high target value to terrorists and those who intend harm to government officers, witnesses, the public, and others. We must preserve sufficient space surrounding our buildings to protect them from harm. All new federal courthouses constructed since 1995 incorporate these design features as foundation security measures.

The design of the Casey Courthouse predates these painful lessons and contains virtually none of these features. Judges park in the surface lot immediately adjacent what would become the Capitol Street light rail station. The USMS unloads prisoner buses in this same surface lot, in view of passers by. The only viable solution to these vexing

problems is to construct a new courthouse, which is impossible in the foreseeable future in Houston. Major new federal courthouse projects typically take ten years from concept to fruition. Regrettably, no such plans exist for Houston (dozens of other cities have already developed their cases for a new courthouse and wait in line for Congressional funding). We therefore will all have to live with the Casey Courthouse's security deficiencies for many years to come.

Houston is home to a high volume of criminal cases and, from time-to-time, there are significant prosecutions that involve serious threats to the court officials, witnesses and others, thereby exacerbating the need for very tight security. The addition of two public rail tracks and stations at our front and back doorsteps (and gates) could render the USMS' mission of protecting the judiciary and the court personnel unachievable. Increasing the traffic flow on two sides of the courthouse not only jeopardizes the safety of the court personnel, but also enables associates of the prisoners to plan dangerous incidents as the prisoners are transferred from other locations. There also are comparable risks to the public using the rail lines.

Unfortunately, merely building a wall around the property—regardless of material used or height attained—would fail to fully address critical security deficiencies. Gates must open to permit vehicle passage, and closing the Capitol Street entrance would unacceptably limit the USMS in managing emergency situations. The presence of light rail so close to the courthouse could provide a very predictable way to block off access to the courthouse. In certain emergency situations, the presence of the rail station also would compromise the rapid transport of judges, witnesses, prisoners and the public. Further, there could be serious disruption to rail operations if a high threat trial or associated problems dictated closing the courthouse, or even the rail line itself on an emergency basis.

I urge you, as the Chair of the Building Security Committee, and others at the Courthouse to seek relocation of the rail routes and stations so they are some distance from the Casey Courthouse.

Thank you for your consideration in this matter.

Sincerely,



David F. Hubbuch, Chief
Office of Security Systems

cc: Elizabeth Saenz
Acting United States Marshal

- Your Name
- Your Email
- Recipient's Email
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Still no plan for parish courthouse security

By [Matthew Pleasant](#)
Staff Writer

Published: Sunday, July 26, 2009 at 6:01 a.m.
Last Modified: Sunday, July 26, 2009 at 12:13 a.m.

HOUMA — Gaining entry to the Terrebonne Parish Courthouse is as simple as opening one of its many doors. Take your pick, and you're inside.

Related Links:

- [Lafourche Council set to vote on jail health-care provider](#)

Some call the easy access a convenience, but others call it a danger. The ease of entering to pay a traffic ticket is the same for someone carrying in a weapon.

Bailiffs require the public to walk through metal detectors before entering courtrooms, but no guards search for contraband at the downtown courthouse entrance or its annex.

Courthouse tenants, including officials with the Terrebonne Parish Sheriff's Office and District Attorney's Office, said plans usually falter due to concerns about money and other factors.

"Nobody has ever seemed to get anything going," said District Judge George Larke.

As plans by the parish government to eventually renovate a jury room and replace an elevator begin, the question of whether the courthouse's most overdue need will finally be addressed remains unanswered.

Larke, the 32nd Judicial District's chief judge, said he and other judges have discussed various improvements with Parish President Michel Claudet, but most dealt with renovating the aging complex.

A workable plan that includes input from all the building's tenants and the parish government has yet to develop despite years of discussion.

Claudet did not return calls to his office or his cell phone to discuss improvements and security Thursday and Friday.

"We all agree that we want some security," said District Judge Johnny Walker. "The question is, how to do it?"

An impetus

A push to create a security system usually takes an event that exposes its need, said Steven Hartman, the chief deputy of the U.S. Marshals Service for the Eastern District of Louisiana.

The agency provides security for the federal judiciary throughout the country.

"There has to be something that is the impetus for change," he said. "If you're able to go on and not have an incident, I think there is less emphasis."

If Terrebonne had a reason to create stringent security at the courthouse, it surfaced in September of 2001 when two prisoners escaped, one of whom later shot himself at an east Houma home.

Inmates Leroy Jones Jr. and Andrew Bourg of Houma were boarding a van at the courthouse to return them to the parish jail. They overpowered two guards and took one of their 9 mm pistols, according to authorities.

The incident occurred in the annex's basement, authorities said. The pair ran from the basement out to Goode Street, where they stole a car from a woman at gunpoint, authorities said.

Police said they drove toward a home where Jones' mother lived on St. Joseph Street. Jones ran inside the house, authorities said, and was later confronted with police on the porch, where he shot himself.

Bourg later crashed the car into a guardrail on the Howard Avenue Bridge, police said.

Security breaches continue today.

In June, 18-year-old Byron Blake ran from the courthouse when a judge increased his bond on a rape charge, deputies said. Officers chased Blake to Belanger and Barrow streets, where he arrested.

Entrances, exits

An obstacle to adding security at the courthouse is deciding which entrances and exits to close to the public, Sheriff Vernon Bourgeois said. By some estimates, there are as many as 30 entrances to the building and its annex.

Bourgeois said he approached the parish with the question two months ago and is awaiting word from Public Works Director Greg Bush. Bush said he is waiting for an updated assessment from the U.S. Marshals Service, which does reports on courthouse security and recommends improvements.

Bourgeois said there are also questions of jurisdiction. The courthouse is within city limits, where law enforcement is provided by Houma Police Department. But it could be the Sheriff's Office responsibility by proximity because the annex is its home.

Hartman said what often keeps efforts to improve security at a standstill is failure at collaboration between the agencies housed in the courthouse.

"You have to have recognition that it's something we need to do," he said. "Without support from all the entities involved it is very difficult to achieve the level of security you're striving for."

Though money and manpower are often cited as issues, Hartman said improvements can be made to any building to increase security that cost nothing.

Closing some public entrances and allowing only employees through others can reduce the risk, he said.

A committee headed by the largest tenants of the building to discuss and develop security policies is also among his examples.

"That costs you nothing," he said.

Starting from scratch

Compare the Terrebonne Parish Courthouse security with that in Lafourche and the deficiencies are laid bare.

The Lafourche Courthouse first implemented security in 1997, Judge Jerome Barbera said.

To help pay for the equipment judges saved money from their judiciary expense fund, made up of dollars collected from court fees, he said.

They bought two X-ray scanning devices, metal detectors for the entrances and wands used during secondary searches for metal objects, Barbera said. The Lafourche Parish Sheriff's Office provided a deputy and the judges hired another, he said.

"We were careful with our money," he said.

It took an initial investment of about \$60,000 to establish the security. It now costs about \$65,000 a year to maintain it, including equipment maintenance and salaries for guards, he said.

The judiciary and Clerk of Court office are now negotiating with the parish government to help share in the cost of the system, which he said has helped ferret out knives, marijuana and a crow bar.

"We didn't want to wait for something to happen," he said.

Staff Writer Matthew Pleasant can be reached at 857-2202 or matthew.pleasant@houmatoday.com.

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